



MEMO ENDORSED

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007

SEEMA KASSAB
Assistant Corporation Counsel
phone: (212) 356-0827
fax: (212) 356-3509
skassab@law.nyc.gov

January 4, 2024


VIA ECF

Honorable Edgardo Ramos
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: Guillermo Aberado v. City of New York, et al.
23-CV-4266 (ER)

Your Honor:

In light of Mr. Pawar's representations in response to the City's letter motion, the parties are directed to jointly submit a status update by February 5, 2024. SO ORDERED.


Edgardo Ramos, U.S.D.J.
Dated: 1/5/24
New York, New York

I represent defendant City of New York (the "City") in the above-referenced matter. Defendant City writes to respectfully request that the Court order plaintiff to respond to the City's Document Requests and Interrogatories ("DRIs"), served on August 31, 2023, by a date certain, or otherwise face dismissal for failure to prosecute.

By way of background, plaintiff filed the Complaint on May 23, 2023 alleging *inter alia*, claims of excessive force and negligence arising from an allegation that he was sprayed with mace on September 2, 2022 while he was detained at Rikers Island and that he subsequently slipped and fell in the shower while trying to rinse his body. On September 1, 2023, the parties appeared at an initial conference before the Court whereat Your Honor endorsed the case management plan proposed by the parties. In advance of the initial conference, defendant City served DRIs upon plaintiff on August 31, 2023.¹ Accordingly, plaintiff's responses thereto were due on October 2, 2023. Having not received plaintiff's responses, defendant contacted plaintiff on October 12, November 2, and December 26, 2023, to check on the status of plaintiff's responses.² To date, plaintiff has neither produced the responses nor indicated a date by which the City can expect to receive the responses. Plaintiff's continued failure to serve responses has essentially caused a standstill in this matter.

¹ Plaintiff served the City with DRIs on September 13, 2023, and the City served its responses thereto on October 12, 2023.

² Plaintiff's counsel, Mr. Pawar, responded to the November 2nd email stating that he would do his best to respond within a week. He failed to do so.

Despite an extensive investigation, the City has not located any documents that would indicate that the events alleged in the complaint occurred. Therefore, it is imperative that plaintiff provide documentary evidence concerning the alleged underlying incident including, but not limited to, the requested documents and releases concerning any physical or emotional injuries resulting from the alleged incident and plaintiff's arrest history, as such information/documents are relevant both to damages and credibility. Despite the fact that the sought-after information is both clearly relevant and discoverable, plaintiff has provided no cogent explanation as to why he has yet to provide responses to the City's DRIs. Moreover, defendant is unable to mount a comprehensive defense, including preparing for and/or scheduling plaintiff's deposition without the discovery responses.

Accordingly, the City respectfully requests that the Court order Plaintiff to provide responses to the City's DRIs by a date certain, or, alternatively face dismissal for failure to prosecute. Defendant City thanks the Court for its consideration herein.

Respectfully submitted,

/s/ Seema Kassab
Seema Kassab
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Via ECF
Vik Pawar
Attorney for Plaintiff